

AMENDED IN SENATE JULY 16, 2009

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 636

Introduced by Assembly Member Jones

February 25, 2009

An act to amend Section 5387 of, and to add Section 5387.3 to, the Public Utilities Code, and to amend Section 13369 of, and to add Section ~~13369.5~~ 14602.9 to, the Vehicle Code, relating to charter-party carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 636, as amended, Jones. Charter-party carriers: busdrivers.

(1) The Passenger Charter-Party Carriers Act, with certain exceptions, prohibits a charter-party carrier of passengers from engaging in transportation services subject to regulation by the Public Utilities Commission without obtaining a specified certificate or permit, as appropriate, from the commission. The act makes it unlawful, among other things, for the owner of a charter-party carrier of passengers to permit the operation of any vehicle upon any public highway for compensation without having obtained from the commission a certificate or permit, as specified, pursuant to the act.

This bill would require the commission to *permanently revoke the authority to operate a charter-party carrier or to permanently bar from receiving a permit or certificate from the commission a charter-party carrier that operates a bus without having been issued a permit from*

the commission, operates a bus with a suspended permit from the commission, has one or more buses improperly registered with the Department of Motor Vehicles, or knowingly employs a busdriver who has not been issued the required driver's license *of the proper class, a passenger vehicle* endorsement, or *the proper* certificate to drive a bus. The bill also would ~~permanently prohibit suspend for a period of 5 years~~ a person who drives a bus for a charter-party carrier without having been issued the proper driver's license *of the proper class, passenger vehicle* endorsement, or *the required* certificate from driving a bus of any kind. The bill would require the Department of Motor Vehicles to refuse to issue or renew, or to suspend or revoke, that person's ~~driving privilege~~ *passenger vehicle endorsement* and would provide that such a person would be ~~permanently~~ ineligible for ~~an a~~ *a passenger vehicle* endorsement that would permit him or her to drive a bus, as defined, *for 5 years*.

The bill would also authorize a charter-party carrier subject to the bar described above, that has received a notice of refusal or revocation of its permit to operate ~~or a person who has received a notice of refusal to issue or renew, or a notice of suspension or revocation of, his or her driver's license, endorsement, or certificate~~ pursuant to these provisions, to submit a written request for a specified hearing within 15 days after the mailing of the notice.

The bill would ~~require~~ *authorize* an officer of the Department of the California Highway Patrol ~~who stops or inspects to impound~~ a bus of a charter-party carrier that is operating a bus without having been issued a permit *or certificate* from the commission, operates a bus with a suspended permit *or certificate* from the commission, or is operating a bus that is being driven by a driver to whom the appropriate *driver's license of the proper class, a passenger vehicle* endorsement, or *the required* certificate has not been issued, ~~to impound the bus~~. The bill would also prohibit the commission from issuing a new permit *or certificate* to operate a charter-party carrier if an officer, director, or owner of that charter-party carrier was an officer, director, or owner of a charter-party carrier that *has its authority to operate as a charter-party carrier permanently revoked by the commission* or was permanently barred from receiving a permit or certificate from the commission pursuant to these provisions.

(2) Under existing law, a violation of the Passenger Charter-Party Carriers Act, or a violation of an order or direction of the commission issued pursuant to the act, is a crime.

Because the provisions of this bill would be a part of the act and because a violation of those provisions or of an order or decision of the commission implementing those provisions would be a crime, the bill would impose a state-mandated local program by creating new crimes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5387 of the Public Utilities Code is
2 amended to read:

3 5387. (a) It is unlawful for the owner of a charter-party carrier
4 of passengers to permit the operation of a vehicle upon a public
5 highway for compensation without (1) having obtained from the
6 commission a certificate or permit pursuant to this chapter, (2)
7 having complied with the vehicle identification requirements of
8 Section 5385, 5385.5, or 5385.6, and (3) having complied with
9 the accident liability protection requirements of Section 5391.

10 (b) A person who drives a bus for a charter-party carrier without
11 ~~having been issued the proper driver's license, endorsement, or~~
12 ~~having a current and valid driver's license of the proper class, a~~
13 ~~passenger vehicle endorsement, or the required certificate shall~~
14 ~~be permanently prohibited~~ *suspended* from driving a bus of any
15 kind, including, but not limited to, a bus, schoolbus, school pupil
16 activity bus, or transit bus, ~~and from receiving a license or~~
17 ~~endorsement that would permit the driving of any bus. with~~
18 *passengers for a period of five years pursuant to Section 13369*
19 *of the Vehicle Code.*

20 (c) (1) A charter-party carrier that (A) operates a bus without
21 having been issued a permit *or certificate* from the commission,
22 (B) operates a bus with a suspended permit from the commission,
23 (C) knowingly employs a busdriver who ~~has not been issued the~~
24 ~~required license, endorsement, or certificate~~ *does not have a current*
25 *and valid driver's license of the proper class, a passenger vehicle*
26 *endorsement, or the required certificate to drive a bus, or (D) has*

1 one or more buses improperly registered with the Department of
2 Motor Vehicles, shall *have its authority to operate as a*
3 *charter-party carrier permanently revoked by the commission or*
4 be permanently barred from receiving a permit or certificate from
5 the commission.

6 (2) The commission shall not issue a new permit *or certificate*
7 to operate as a charter-party carrier if any officer, director, or owner
8 of that charter-party carrier was an officer, director, or owner of
9 a charter-party carrier *that had its authority to operate as a*
10 *charter-party carrier permanently revoked by the commission or*
11 that was permanently barred from receiving a permit or certificate
12 from the commission pursuant to this subdivision.

13 ~~(d) When an officer of the Department of the California~~
14 ~~Highway Patrol stops or inspects a bus of a charter-party carrier~~
15 ~~that (1) is operating a bus without having been issued a permit~~
16 ~~from the commission, (2) operates a bus with a suspended permit~~
17 ~~from the commission, or (3) is operating a bus is being driven by~~
18 ~~a driver to whom the appropriate license, endorsement, or~~
19 ~~certificate has not been issued, the bus shall be impounded for 30~~
20 ~~days pursuant to the provisions and procedures for the~~
21 ~~impoundment and release of vehicles under Section 14602.6 of~~
22 ~~the Vehicle Code. The charter-party carrier shall have a right to a~~
23 ~~hearing by the impounding agency.~~

24 (d) An officer of the Department of the California Highway
25 Patrol may impound a bus of a charter-party carrier for 30 days
26 pursuant to Section 14602.9 of the Vehicle Code if the officer
27 determines that any of the following violations occurred while the
28 bus driver was operating the bus of a charter-party carrier:

29 (1) The driver was operating the bus of a charter-party carrier
30 when the charter-party carrier did not have a permit or certificate
31 issued by the commission.

32 (2) The driver was operating the bus of a charter-party carrier
33 when the charter-party carrier was operating the bus with a
34 suspended permit or certificate from the commission.

35 (3) The driver was operating the bus of a charter-party carrier
36 without having a current and valid driver's license of the proper
37 class, a passenger vehicle endorsement, or the required certificate.

38 SEC. 2. Section 5387.3 is added to the Public Utilities Code,
39 to read:

1 5387.3. (a) A charter-party carrier described in subdivision
2 (c) of Section 5387, that has received a notice of refusal or
3 revocation of its permit to operate, may submit to the commission,
4 within 15 days after the mailing of the notice, a written request for
5 a hearing. The charter-party carrier shall furnish a copy of the
6 request to the Department of the California Highway Patrol at the
7 same time that it makes its request for a hearing to the commission.
8 Failure to request a hearing, in writing, within the 15-day period
9 is a waiver of the right to a hearing.

10 (b) Upon receipt by the commission of the hearing request, the
11 commission shall hold a hearing within a reasonable time, not to
12 exceed 21 days, and may appoint a hearing officer to conduct the
13 hearing. At the hearing, the burden of proof is on the charter-party
14 carrier to prove that it ~~is not a charter-party carrier described in~~
15 *was not in violation of* subdivision (c) of Section 5387.

16 (c) The refusal to, or revocation of, the permit to operate, may
17 only be rescinded by the hearing officer if the charter-party carrier
18 proves that it was not in violation of subdivision (c) of Section
19 5387, and that the basis of the refusal or revocation resulted from
20 a factual error.

21 SEC. 3. Section 13369 of the Vehicle Code is amended to read:

22 13369. (a) This section applies to the following endorsements
23 and certificates:

- 24 (1) Passenger transportation vehicle.
25 (2) Hazardous materials.
26 (3) Schoolbus.
27 (4) School pupil activity bus.
28 (5) Youth bus.
29 (6) General public paratransit vehicle.
30 (7) Farm labor vehicle.
31 (8) Vehicle used for the transportation of developmentally
32 disabled persons.

33 (b) The department shall refuse to issue or renew, or shall
34 revoke, the certificate or endorsement of any person who meets
35 the following conditions:

- 36 (1) Within three years, has committed any violation that results
37 in a conviction assigned a violation point count of two or more,
38 as defined in Sections 12810 and 12810.5. The department may
39 not refuse to issue or renew, nor may it revoke, a person's
40 hazardous materials or passenger transportation vehicle

1 endorsement if the violation leading to the conviction occurred in
2 the person's private vehicle and not in a commercial motor vehicle,
3 as defined in Section 15210.

4 (2) Within three years, has had his or her driving privilege
5 suspended, revoked, or on probation for any reason involving
6 unsafe operation of a motor vehicle. The department may not refuse
7 to issue or renew, nor may it revoke, a person's passenger
8 transportation vehicle endorsement if the person's driving privilege
9 has, within three years, been placed on probation only for any
10 reason involving unsafe operation of a motor vehicle.

11 (3) Notwithstanding paragraphs (1) and (2), does not meet the
12 qualifications for issuance of a hazardous materials endorsement
13 set forth in Parts 383, 384, and 1572 of Title 49 of the Code of
14 Federal Regulations.

15 (c) The department may refuse to issue or renew, or may suspend
16 or revoke, the certificate or endorsement of any person who meets
17 any of the following conditions:

18 (1) Within 12 months, has been involved as a driver in three
19 accidents in which the driver caused or contributed to the causes
20 of the accidents.

21 (2) Within 24 months, as a driver, caused or contributed to the
22 cause of an accident resulting in a fatality or serious injury or
23 serious property damage in excess of seven hundred fifty dollars
24 (\$750).

25 (3) Has violated any provision of this code, or any rule or
26 regulation pertaining to the safe operation of a vehicle for which
27 the certificate or endorsement was issued.

28 (4) Has violated any restriction of the certificate, endorsement,
29 or commercial driver's license.

30 (5) Has knowingly made a false statement or failed to disclose
31 a material fact on an application for a certificate or endorsement.

32 (6) Has been determined by the department to be a negligent or
33 incompetent operator.

34 (7) Has demonstrated irrational behavior to the extent that a
35 reasonable and prudent person would have reasonable cause to
36 believe that the applicant's ability to perform the duties of a driver
37 may be impaired.

38 (8) Excessively or habitually uses, or is addicted to, alcoholic
39 beverages, narcotics, or dangerous drugs.

(9) Does not meet the minimum medical standards established or approved by the department.

(d) The department may cancel the certificate or endorsement of any driver who meets any of the following conditions:

(1) Does not have a valid driver's license of the appropriate class.

(2) Has requested cancellation of the certificate or endorsement.

(3) Has failed to meet any of the requirements for issuance or retention of the certificate or endorsement, including, but not limited to, payment of the proper fee, submission of an acceptable medical report and fingerprint cards, and compliance with prescribed training requirements.

(4) Has had his or her driving privilege suspended or revoked for a cause involving other than the safe operation of a motor vehicle.

(e) (1) The department shall refuse to issue or renew, or shall suspend or revoke, the driver's license, endorsement, or certificate *passenger vehicle endorsement* of a person who violates subdivision (b) of Section 5387 of the Public Utilities Code.

(2) A person found to be in violation of subdivision (b) of Section 5387 of the Public Utilities Code shall be ~~permanently~~ ineligible for ~~an~~ *a passenger vehicle* endorsement that would permit him or her to drive a bus of any kind, including, but not limited to, a bus, schoolbus, youth bus, school pupil activity bus, trailer bus, or a transit bus, *with passengers, for a period of five years*.

(f) (1) Reapplication following refusal or revocation under subdivision (b) or (c) may be made after a period of not less than one year from the effective date of denial or revocation, except in cases where a longer period of suspension or revocation is required by law.

(2) Reapplication following cancellation under subdivision (d) may be made at any time without prejudice.

~~SEC. 4. Section 13369.5 is added to the Vehicle Code, to read:~~

~~13369.5. (a) A person who has received a notice of refusal to issue or renew, or a notice of suspension or revocation of, his or her driver's license, endorsement, or certificate pursuant to paragraph (1) of subdivision (e) of Section 13369 may submit to the department, within 15 days after the mailing of the notice, a written request for a hearing. Failure to request a hearing, in writing, within 15 days is a waiver of the right to a hearing.~~

~~(b) Upon receipt by the department of the hearing request, the department may stay the action until a hearing is conducted and the final decision is made by the hearing officer. The department shall not stay the action when there is reasonable cause to believe that the stay would pose a threat to a member of the motoring public who may require the services of a charter-party carrier.~~

~~(c) A person whose driver's license, endorsement, or certificate has been refused or revoked pursuant to paragraph (1) of subdivision (c) of Section 13369 is not entitled to a hearing whenever the action by the department is made mandatory by this article or any other applicable law or regulation.~~

~~(d) Upon receipt of a request for a hearing, and when the requesting party is entitled to a hearing under this article, the department shall appoint a hearing officer to conduct a hearing in accordance with Section 14112.~~

SEC. 4. Section 14602.9 is added to the Vehicle Code, to read:

14602.9. (a) An officer of the Department of the California Highway Patrol may impound a bus of a charter-party carrier for 30 days if the officer determines that any of the following violations occurred while the bus driver was operating the bus of a charter-party carrier:

(1) The driver was operating the bus of a charter-party carrier when the charter-party carrier did not have a permit or certificate issued by the Public Utilities Commission, pursuant to Section 5375 of the Public Utilities Code.

(2) The driver was operating the bus of a charter-party carrier when the charter-party carrier was operating the bus with a suspended permit or certificate from the Public Utilities Commission.

(3) The driver was operating the bus of a charter-party carrier without having a current and valid driver's license of the proper class, a passenger vehicle endorsement, or the required certificate.

(b) Within two working days after impoundment, the impounding agency shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days, impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a

1 published telephone number that provides information 24 hours
2 a day regarding the impoundment of vehicles and the rights of a
3 registered owner to request a hearing.

4 (c) The registered and legal owner of a vehicle that is removed
5 and seized under subdivision (a) or his or her agent shall be
6 provided the opportunity for a storage hearing to determine the
7 validity of, or consider any mitigating circumstances attendant to,
8 the storage, in accordance with Section 22852.

9 (d) (1) The impounding agency shall release the vehicle to the
10 registered owner or his or her agent prior to the end of the
11 impoundment period under any of the following circumstances:

12 (A) When the vehicle is a stolen vehicle.

13 (B) When the vehicle is subject to bailment and is driven by an
14 unlicensed employee of a business establishment, including a
15 parking service or repair garage.

16 (C) When the driver of the vehicle is not the sole registered
17 owner of the vehicle and the vehicle is being released to another
18 registered owner of the vehicle who agrees not to allow the driver
19 to use the vehicle until after the end of the impoundment period
20 and the charter-party carrier has been issued a valid permit from
21 the Public Utilities Commission, pursuant to Section 5375 of the
22 Public Utilities Code.

23 (2) A vehicle shall not be released pursuant to this subdivision
24 without presentation of the registered owner's or agent's currently
25 valid driver's license to operate the vehicle and proof of current
26 vehicle registration, or upon order of a court.

27 (e) The registered owner or his or her agent is responsible for
28 all towing and storage charges related to the impoundment, and
29 any administrative charges authorized under Section 22850.5.

30 (f) A vehicle removed and seized under subdivision (a) shall be
31 released to the legal owner of the vehicle or the legal owner's
32 agent prior to the end of the impoundment period if all of the
33 following conditions are met:

34 (1) The legal owner is a motor vehicle dealer, bank, credit union,
35 acceptance corporation, or other licensed financial institution
36 legally operating in this state, or is another person who is not the
37 registered owner and holds a security interest in the vehicle.

38 (2) The legal owner or the legal owner's agent pays all towing
39 and storage fees related to the seizure of the vehicle. A lien sale
40 processing fee shall not be charged to the legal owner who redeems

1 *the vehicle prior to the 10th day of impoundment. The impounding*
2 *authority or any person having possession of the vehicle shall not*
3 *collect from the legal owner of the type specified in paragraph*
4 *(1), or the legal owner's agent, any administrative charges imposed*
5 *pursuant to Section 22850.5 unless the legal owner voluntarily*
6 *requested a poststorage hearing.*

7 *(3) (A) The legal owner or the legal owner's agent presents*
8 *either lawful foreclosure documents or an affidavit of repossession*
9 *for the vehicle, and a security agreement or title showing proof of*
10 *legal ownership for the vehicle. All presented documents may be*
11 *originals, photocopies, or facsimile copies, or may be transmitted*
12 *electronically. The impounding agency shall not require a*
13 *document to be notarized. The impounding agency may require*
14 *the agent of the legal owner to produce a photocopy or facsimile*
15 *copy of its repossession agency license or registration issued*
16 *pursuant to Chapter 11 (commencing with Section 7500) of*
17 *Division 3 of the Business and Professions Code, or to demonstrate,*
18 *to the satisfaction of the impounding agency, that the agent is*
19 *exempt from licensure pursuant to Section 7500.2 or 7500.3 of the*
20 *Business and Professions Code.*

21 *(B) Administrative costs authorized under subdivision (a) of*
22 *Section 22850.5 shall not be charged to the legal owner of the type*
23 *specified in paragraph (1), who redeems the vehicle unless the*
24 *legal owner voluntarily requests a poststorage hearing. A city,*
25 *county, or state agency shall not require a legal owner or a legal*
26 *owner's agent to request a poststorage hearing as a requirement*
27 *for release of the vehicle to the legal owner or the legal owner's*
28 *agent. The impounding agency shall not require any documents*
29 *other than those specified in this paragraph. The impounding*
30 *agency shall not require any documents to be notarized.*

31 *(C) As used in this paragraph, "foreclosure documents" means*
32 *an "assignment" as that term is defined in subdivision (o) of*
33 *Section 7500.1 of the Business and Professions Code.*

34 *(g) (1) A legal owner or the legal owner's agent who obtains*
35 *release of the vehicle pursuant to subdivision (f) may not release*
36 *the vehicle to the registered owner of the vehicle or any agents of*
37 *the registered owner, unless the registered owner is a rental car*
38 *agency, until after the termination of the impoundment period.*

39 *(2) The legal owner or the legal owner's agent shall not*
40 *relinquish the vehicle to the registered owner until the registered*

1 owner or that owner's agent presents his or her valid driver's
2 license or valid temporary driver's license to the legal owner or
3 the legal owner's agent. The legal owner or the legal owner's
4 agent shall make every reasonable effort to ensure that the license
5 presented is valid.

6 (3) Prior to relinquishing the vehicle, the legal owner may
7 require the registered owner to pay all towing and storage charges
8 related to the impoundment and any administrative charges
9 authorized under Section 22850.5 that were incurred by the legal
10 owner in connection with obtaining custody of the vehicle.

11 (h) (1) A vehicle removed and seized under subdivision (a)
12 shall be released to a rental agency prior to the end of the
13 impoundment period if the agency is either the legal owner or
14 registered owner of the vehicle and the agency pays all towing
15 and storage fees related to the seizure of the vehicle.

16 (2) The owner of a rental vehicle that was seized under this
17 section may continue to rent the vehicle upon recovery of the
18 vehicle. However, the rental agency shall not rent another vehicle
19 to the driver of the vehicle that was seized until the impoundment
20 period has expired.

21 (3) The rental agency may require the person to whom the
22 vehicle was rented to pay all towing and storage charges related
23 to the impoundment and any administrative charges authorized
24 under Section 22850.5 that were incurred by the rental agency in
25 connection with obtaining custody of the vehicle.

26 (i) Notwithstanding any other provision of this section, the
27 registered owner, and not the legal owner, shall remain responsible
28 for any towing and storage charges related to the impoundment,
29 any administrative charges authorized under Section 22850.5, and
30 any parking fines, penalties, and administrative fees incurred by
31 the registered owner.

32 (j) The impounding agency is not liable to the registered owner
33 for the improper release of the vehicle to the legal owner or the
34 legal owner's agent provided the release complies with this section.

35 (k) For the purposes of this section, a "bus" means a bus as
36 defined by Section 233 or a tour bus as defined by Section 612.

37 (l) For the purposes of this section, a "charter-party carrier"
38 means a charter-party carrier as defined by Section 5360 of the
39 Public Utilities Code.

1 SEC. 5. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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